WOO SING and SIM AH KOW v. REGINA

[A. Cr. J. (Murray-Aynsley C.J., Pretheroe Ag. C.J. (F.M.) & Whitton J.) September 8, 1954]

[Singapore — Magistrate's Appeal Nos. 47 & 48 of 1954]

Penal Code, s. 304A — Interpretation of — Negligence — Manslaughter by negligence — Standard of negligence in criminal and civil cases.

In the interpretation of the Penal Code it is not justified to look outside the Code in order to give a special meaning to the words used in it. The Penal Code is not a codification of English Law. The law of manslaughter in England has no relevance in the interpretation of s. 304A. This section does not require a degree of negligence comparable to that required to support a conviction for manslaughter in England. It is unnecessary to lay down a different standard of negligence in civil and criminal cases, although a higher standard of proof is required in the latter cases.

Cheow Keok v. Public Prosecutor (1940) M.L.J. 103 not followed.

In the first appeal the appellant was driving a lorry along Connaught Drive towards the Town Hall. Connaught Drive was a one-way street. The appellant was travelling on the right hand side of the road more towards the centre and was following a motor car. In front of the motor car was a bus. The appellant swerved to the right in order to overtake the motor car. Just then the bus stopped at a bus stop and the motor car swerved to the right to pass the bus. The appellant in order to overtake the motor car went further to the right of the road and collided with a cyclist who was then about 10 feet from the edge of the road.

Held: the appellant was guilty of negligence within s. 304A, and for the degree of negligence displayed the penalty of 3 months rigorous imprisonment and disqualification for 2 years was not inappropriate. However, in view of the delay that occurred in consideration of the legal aspects of the case, a fine of $250 or 2 months rigorous imprisonment was substituted.

In the second appeal the appellant was driving a motor car along Ponggol Road towards Upper Serangoon Road and was passing through a village at the 8¾ ml. stone. At that moment a small boy was walking across the road. When the boy was at the centre of the road, the appellant's car was about 30 feet away. When the car drew nearer to the boy it swerved a little to the right and the left front mudguard of the car hit the boy. The road was narrow and straight and at the time of the accident there were no other vehicles or pedestrian. The speed of the car according to the prosecution was about 30 m.p.h.

Held: there was negligence sufficient to sustain a conviction under s. 304A but the sentence of 1 month rigorous imprisonment was substituted by a fine of $150 or 1 month rigorous imprisonment.

Cases referred to:—

(1) *Bank of England v. Vagliano Bros.* (1891) A.C. 107 at 144 etc.

(2) *R. v. Bateman* 94 L.J.K.B. at 798; (1925) Cr. App. R. 8.

Cases cited: Cheow Keok v. Public Prosecutor (1940) M.L.J. 103; *Andrews v. Director of Public Prosecutions* (1937) A.C. 576; *Lai Tin v. Public Prosecutor* (1939) M.L.J. 248; *Potts v. Hickman* (1941) A.C. 212; *Battat v. R.* (1951) M.L.J. 112; *Tan Kim Cheng v. R.* (1953) M.L.J. 186.

MAGISTRATE'S APPEAL heard before a Court of Three Judges.

S. K. Reddi for the first appellant.

L. A. J. Smith for the second appellant.

A. V. Winslow (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Murray-Aynsley C.J. (with whom **Pretheroe Ag. C.J. (F.M.)** agreed): — In both these cases the appellants were convicted under section 304A of the Penal Code. As some doubt exists as to the interpretation of that section, I reserved the question for consideration by a Full Court.

As regards interpretation, we are dealing with a code. In the first instance we study the words of the code itself. We are not justified in looking outside the code in order to give a special meaning to the words used in it. The classical exposition of the matter is found in Lord Herschell's judgment in *Bank of England v. Vagliano Bros.*[1] at p. 144 *et seq.* The Penal Code is not a codification of English law. In numerous respects its provisions resemble the corrsponding English law. In others, particularly as regards homicide, its provisions differ very greatly and deliberately so. In my opinion it is always dangerous to introduce English cases into the consideration of the Penal Code. The English law as to homicide remains unwritten and is still in a confused state, though of recent years there has been some clarification. But there still remains, in theory at least, constructive murder and constructive manslaughter. The Penal Code deliberately excluded the constructive offences and in sections 299-300 required certain specific intentions. In England involuntary manslaughter has always been very much tied up with the notion of constructive offences, in early times entirely so. It was the doing of an unlawful act, not the doing of a negligent act, that rendered a person guilty of manslaughter.

In these circumstances the English law of manslaughter has no relevance in the interpretation of section 304A. In England negligence in any ordinary sense of the word is not the criterium of manslaughter. In *Bateman's*[2] *case* Lord Hewart C.J., said: "It is most desirable that in trials for manslaughter by negligence it should be impressed on the jury that the issue is not negligence or no negligence, but felony or no felony." (94 L.J., K.B. at p. 798). I do not think that once this source of confusion is removed Courts need have any difficulty in the application of this section to particular cases. Different degrees of gravity can be treated by a suitable variation in the

penalty, bearing in mind that section 304A involves offences of much less gravity than such as would come within the scope of manslaughter in England.

I do not think it is necessary to lay down a different standard of negligence in civil and criminal cases, although, of course, a higher standard of proof is required in the latter cases.

As regards the cases before us, I consider that in Appeal No. 47, Woo Sing was guilty of such negligence as brought him within the scope of the section, though it was not of such a degree of negligence as would have rendered him guilty of manslaughter in England. I think that for the degree of negligence displayed the penalty imposed by the Court below was not inappropriate. However, in the circumstances in view of the delay that has occurred in consideration of the legal aspects of the case, I would substitute a fine of $250 or two months r.i. The disqualification to stand.

The second case (No. 48) is more difficult. I think that negligence was proved and one cannot say a conviction under section 304A was wrong. I think, however, that a fine of $150 or one month r.i. would be an adequate punishment.

Whitton J. : — I have had the advantage of reading the judgment of the learned President, and an in agreement with it subject to saying I think a higher degree of negligence is necessary in order to establish a criminal offence than is sufficient to create civil liability.

Order accordingly.

Solicitors : *Braga & de Souza; Donaldson & Burkinshaw.*

LOW KIM SEONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) September 11, 1954]

[K. L. — Criminal Appeal No. 60 of 1954]

Road Traffic — Motor Vehicles (Construction and Use) Regulations, 1948, reg. 103 — Maintenance of vehicle — Emission of black smoke — Reasonable steps or reasonable care.

In this case the appellant was charged with being the driver of a motor lorry and using the said vehicle on the public road in such a condition as to emit smoke or visible vapour, the emission of which could be prevented or avoided by taking reasonable steps or the exercise of reasonable care contrary to reg. 103 of the Motor Vehicles (Construction and Use) Regulations, 1948, and punishable under s. 8(i) of the Road Traffic Proclamation No. 17 of 1945.

The evidence was that of one witness who stated that he observed the lorry driven by the appellant emitting a lot of black smoke. No other evidence was called. The learned Deputy Public Prosecutor argued that that amounted to evidence that the appellant had committed the offence charged, and that the emission of a lot of black smoke did not necessarily require expert evidence to prove lack of maintenance, and he added: "It is to my mind, common knowledge, that a vehicle fairly well maintained, would not emit a lot of black smoke."

Held: it was for the prosecution to prove that the emission of black smoke was due to the causes alleged in the charge.

MAGISTRATE'S CRIMINAL APPEAL.

Ng Ek Teong for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Wilson J. : — The appellant was charged with the following offence :—

"That you on 8.3.54 at about 12.45 p.m. at Jalan Raja, Kuala Lumpur, being the driver of motor lorry No. BB 5782, did use the said vehicle on the public road in such a condition as to emit smoke or visible vapour, the emission of which could be prevented or avoided by the taking of any reasonable steps or the exercise of reasonable care contrary to Regulation 103 of the Motor Vehicles (Construction and Use) Regulations, 1948, and punishable under Section 8(i) of the R.T.P. 17/45."

It has been argued before me that the charge is bad in law because of duplicity, inasmuch as the charge relates both to smoke and visible vapour in the alternative. Having regard to the conclusions to which I have come, it is not necessary for me to give a decision on this point which would in any case be *obiter dicta.*

The evidence was that of one witness who stated that he observed the lorry driven by the defendant emitting a lot of black smoke. No other evidence was called. It has been argued before me by the Deputy Public Prosecutor that that amounted to evidence that he had committed the offence charged, and that the learned Magistrate was entitled to say, as he did, that the emission of a lot of black smoke does not necessarily require expert evidence to prove lack of maintenance, and he added : "It is to my mind, common knowledge, that a vehicle fairly well maintained, would not emit a lot of black smoke." His knowledge of motor cars and mechanics may be far greater than mine but I could not go so far as to say that the emission of black smoke must necessarily indicate lack of maintenance.

The Deputy Public Prosecutor has also argued before me that the emission of black smoke at any rate raises a *prima facie* case against the appellant under the charge, and that it was for him, if he wished, to show that it was not caused by the failure of taking any reasonable steps or exercising reasonable care to prevent it.

I am unable to agree with this contention and, in my opinion, it was for the prosecution to prove that the emission of black smoke was due to the causes alleged in the charge.

Accordingly, I allowed the appeal and quashed the conviction and ordered that the fine of $50 which had been paid be repaid to the appellant.

Appeal allowed.

Solicitors for the appellant : *Braddell & Ramani.*